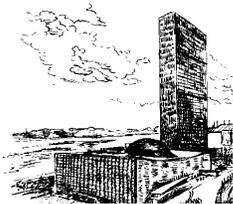


Part 3



Legal Developments

Cloning

In 2002, the United States continued to work in the United Nations to gain support for a ban on all forms of cloning of human embryos and to stop all international efforts that would permit human cloning.

In 2001, the 56th UN General Assembly adopted a Franco–German resolution that tasked the *ad hoc* committee of the Sixth Committee (legal issues), which meets when the General Assembly is not in session, to devise the principles that might serve as the basis for an international convention to ban human reproductive cloning. The United States did not oppose the resolution, but did express skepticism about the wisdom of trying to draft any convention that aimed only at imposing a limited, instead of a comprehensive, ban on human reproductive cloning.

In February 2002, the *ad hoc* committee met and, after hearing from government representatives and scientific experts, concluded that it needed additional time to consider the scope of any cloning ban.

During 2002, three perspectives emerged on this subject. One group opposed all cloning of human embryos (a group that included the United States and many other nations). Another perspective supported a “two-step” process whereby states would conclude a convention to ban human cloning for reproductive purposes and then, perhaps, address human cloning for “therapeutic” purposes (the group supporting this included Germany and France). The third perspective comprised states completely opposed to, and determined to pursue, a ban on human cloning for “therapeutic” purposes.

In September, the *ad hoc* committee of the Sixth Committee met to consider two different approaches to human cloning. The first approach would ban cloning in any form, for any purpose. The second approach would be to conclude a convention banning human cloning for reproductive, but not for “therapeutic,” purposes.

Members of the *ad hoc* committee could not agree on a course of action.

In November 2002, the Sixth Committee unanimously agreed to include in the provisional agenda for its next session, scheduled to occur

between September and November 2003, an item entitled “International Convention Against Reproductive Cloning of Human Beings.” This step represented a compromise that would allow the *ad hoc* committee and the Sixth Committee to continue exploring options in the coming year for an international convention on cloning.

UN Commission on International Trade Law (UNCITRAL)

The UN Commission on International Trade Law (UNCITRAL), established by UN General Assembly Resolution 2205 (XXI) in 1966, continued its technical work on commercial law reform, including the harmonization of national laws to promote trade and commerce in all geographic regions. Based on the report of the General Assembly’s Sixth Committee (legal issues), the UN General Assembly in November reaffirmed the Commission’s mandate as the core legal body within the UN system in the field of international trade law (Resolution 57/17).

The Commission focuses largely on economic effects of trade laws, particularly potential benefits to developing and emerging states. It promotes economic reform through multilateral conventions, model national laws, UN legal guidelines, and technical assistance on trade and commercial law undertaken by the Secretariat on the basis of legal texts adopted by the Commission. The United States actively participates in the Commission, since its work products are generally effective and are beneficial to the U.S. private sector as well as to governmental interests (for example, the UNCITRAL Model Law on Electronic Commerce which was the basis of U.S. uniform state law, as well as federal legislation, on electronic transactions, and the UNCITRAL Model Law on Cross-Border Insolvency, which is expected to be enacted as new provisions of the U.S. Bankruptcy Code).

Located at the UN Center in Vienna, the Commission usually holds several weeks of working group meetings on legal and economic topics provided by participating states, which are then reviewed at the annual plenary session. Private-sector and industry nongovernmental organizations (NGOs) with technical expertise in commercial law are invited to participate. U.S. private-sector associations are particularly active and the Department of State works closely with the U.S. bar and trade industry groups to assure representation of their interests in the international process.

At its 38th Plenary Session in July, the Commission adopted the Model Law on International Commercial Conciliation with full U.S. support. Combined with the Model Law on Arbitration and the Model Rules on Commercial Arbitration and Conciliation, these statutes are the most widely used texts in the area of international commercial dispute resolution. The General Assembly in November recommended that all states

consider adoption of the Conciliation Model Law because it responds to a growing need from international businesses for more flexible methods to resolve disputes. It provides basic authorizing provisions and minimal standards for conciliation, and ensures confidentiality. Successful conciliation and mediation can lower the costs of dispute resolution, preserve underlying business relationships, and promote continued commerce between the parties. The United States supports this recommendation, and the National Conference of Commissioners on Uniform State Laws will seek to implement it as part of the uniform state law system.

The Commission continued oversight of legislative implementation of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Working Group on Arbitration examined possible amendments to or interpretations of the convention with regard to interim measures of protection ordered by an arbitral tribunal and the form of an arbitral agreement. The United States supports these efforts to make international commercial arbitration more effective.

The Commission began consideration of a draft convention on carriage of goods by sea prepared by the Secretariat and the Comité Maritime Internationale, an international NGO in Brussels. U.S. industry sectors that recognize the need to replace antiquated 1936 U.S. carriage of goods by sea laws supported this project. The Working Group on Transport Law met for four weeks; preliminary discussions covered the extent to which the convention should apply to inland carriage, defenses to liability and liability limits, and the extent to which parties could by contract derogate from the convention's terms. Many countries expressed the view that U.S. adherence to the new instrument would be very important, but considerable gaps remain between U.S. views and U.S. commercial interests on the one hand and those of a number of U.S. major trading partners on the other hand. For example, unlike the United States, some countries seek a regulatory approach in this field of law and oppose U.S. proposals to allow contracting parties to derogate from the terms of the proposed convention. The views of U.S. interest groups were obtained through the Transport Law Working Group of the Secretary of State's Advisory Committee on Private International Law, which in 2002 held three public meetings.

The Working Group on Insolvency Law met twice to continue preparing guidelines on insolvency reform. The support of this project by such international financial institutions as the International Monetary Fund (IMF) and the Asian Development Bank reflects widespread recognition that an effective system for recycling economic assets is critical to financing commerce, especially in developing and emerging states, and to mitigating systemic risk. The project involved government experts, including judicial representatives, as well as experts in insolvency practice and the economic effects of insolvency law reform.

The Working Group made sufficient progress and expects to approve the principles underlying the legislative guidelines in 2003. The final text is expected to include U.S. proposals on restructuring, corporate rescue and refinance, and “private ordering” to facilitate agreements between creditors and refinancing interests, particularly in developing and financially distressed countries, and faster access to rescue capital. Related proposals on sovereign debt were raised at the IMF.

UNCITRAL has been working on a legislative guide to general secured interest financing laws since 2001, when the General Assembly adopted the Convention on Assignment of Receivables in International Trade. The initial scope covered financing of trade and inventory receivables largely connected to tangible goods. Excluded were security interests in stocks, bonds, and other assets, due to work on that topic at the International Institute for the Unification of Private Law. UNCITRAL also excluded intellectual property, pending examination of work underway at the World Intellectual Property Organization and other bodies. Because of the close relationship between this project and the UNCITRAL Legislative Guide on insolvency law reform, joint working papers have been prepared.

Adoption of modern secured interest and finance law, already in place in the United States in the Uniform Commercial Code, would allow many countries access to private-sector capital markets, significantly reducing the financing gap that affects developing states and states in transition. Notwithstanding adoption of many of these principles in the 2001 Convention on Assignment of Receivables, the first meetings of the Working Group on Secured Finance left unresolved a number of key issues. The consensus reached by an UNCITRAL colloquium in 2002, which involved many private-sector associations and government experts, should encourage adoption of modern commercial law approaches by the Working Group. While such laws have already been adopted in the United States through the Uniform Commercial Code, they would represent a significant change in the laws of many countries, with uncertain outcomes upon adoption.

UNCITRAL noted the continuing use of the 1996 Model Law on Electronic Commerce as a primary source for new legislation in many countries, including the United States. The Commission began work in 2002 on a draft convention on the formation of contracts in e-commerce. The Working Group in Electronic Commerce reviewed an initial draft prepared by the Secretariat, which drew on recent U.S. laws, including the Federal Electronic Signatures and Global Electronic Commerce Act and the Uniform Electronic Transactions Act, as well as laws and directives from the European Union and other states. Issues considered for the convention included whether to limit its scope to crossborder transactions; how to identify location of international parties in cases involving Internet or other computer systems; whether to exclude consumer transactions,

financial services, or transactions involving software or intellectual property; and the role of electronic agents and automated transactions. The Working Group also considered whether an “omnibus protocol” or other treaty device might be employed to upgrade a number of existing conventions and multilateral instruments to make them compatible with computer-based communications and developing commercial practices. The United States supported both efforts.

Following the completion of the Legislative Guide on Privately Financed Infrastructure Projects (PFI) in 2001, the Commission began preparing model core legislative provisions, a project that was sought by many developing countries as well as private-sector participants. The Working Group on PFI substantially completed these in 2002. The Group had considered recommendations from a number of outside sources, including the Public-Private Infrastructure Advisory Facility, a multi-donor technical assistance organization that focused on developing country issues, and also incorporated current practices for long-term development projects that involved private-sector finance and management in partnership with public-sector regulation. The model provisions, which form the outline of a model law, address fundamental aspects of the legal order necessary for states that wish to attract private capital to finance major infrastructure projects such as public water systems, power plants, airports, and toll roads. The Working Group recommended that the model provisions be considered by the full Commission at its Plenary Session in 2003 for incorporation into a future edition of the Legislative Guide. The United States expects to approve the proposal.

The Secretariat continued its record of effective technical assistance on implementation of modern commercial law, primarily for developing and emerging countries. Its work in modernizing commercial law has facilitated transactions that are theoretically available through trade agreements or other trade liberalization, but are often too difficult to realize because of older domestic legal standards that are incompatible with modern commercial and finance laws in many countries. The United States supports that conclusion and the efforts by the Secretariat to encourage commercial law reform in many countries, within the limited resources that it has available for this purpose.

The Commission continued its unique practice of publishing abstracts of decisions in all UN languages involving UNCITRAL conventions and other trade law texts on its CLOUT system. As authorized by the Commission, the Secretariat undertook initial work to expand the CLOUT system to include guidance for states which adopt UNCITRAL texts, including trends in judicial and arbitral decisions, a process in which U.S. experts are involved. The commission also continued to co-host, along with the Pace University Law School in New York, the annual moot arbitration competition on international private commercial law held in Vienna which in 2002 involved over 120 teams from 30 countries.

The Commission considered, but did not decide, whether to undertake work on proposals regarding fraudulent use of commercial and financial documents, such as letters of credit, loan documents, payment orders, etc., increasingly related to wide use of computer-based documentation. The United States noted that the growing fraudulent use of commercial documents could undermine existing markets and especially impact developing states. The Commission agreed to consider a future study that will involve U.S. experts. Commission members recognized that undertaking activity in this field would go beyond the scope of the Commission's usual work, and resource limitations were already a serious concern vis-à-vis funding for the Secretariat and Working Groups.

In order to enhance the participation of more states, UNCITRAL requested an increase in its size, which is currently 36 member states, the level established in 1973. An increase of 24 more states was approved in UN General Assembly Resolution 57/19, based on a proposal by the General Assembly's Sixth Committee, which stated that this would not set a precedent for other General Assembly bodies, a position agreed to by the United States. The election of additional member states will take place in 2003, coinciding with the expected candidacy of the United States to retain its current membership.

The Commission in 2002 almost doubled the number of active projects, while reducing the average length of working group meetings so as to accommodate the workload through existing conference resources. This resulted from a significant increase in requests by member states for work on commercial law reform, reflecting growing awareness that disparities in commercial law are often reflected in trade and financing gaps.

The Commission sought an increase in its professional staffing level, which has remained at its original 1968 level despite significant work program increases over the last several decades. UNCITRAL headquarters now operates with a staff of approximately 12 professionals. Based on the demonstrated effectiveness of its work, and the Report of the UN Office of Internal Oversight, the United States supported requests for increased staff resources within the existing budgetary levels authorized for the United Nations. The salaries and expenses budget of the Commission is currently about \$1.7 million, which does not include costs for office space and facilities. The latter are allocated in the budget for the UN Vienna International Center. The U.S. share is approximately \$370,000.

The Commission continued its practice of focusing on technical legal work, and avoiding political issues that make progress difficult in some UN General Assembly bodies. This is in part accomplished by tradition and by working towards a core consensus on issues, while not requiring unanimity and rarely invoking voting procedures. Technical discussions, facilitated by Secretariat studies and recommendations, are developed largely through input on legal and economic issues by participating states,

and supplemented by private-sector NGOs with established expertise in commercial law. NGO participation on technical matters in UNCITRAL is by special invitation, and has generally been consistent with U.S. interests. The United States also works actively on commercial law subjects with U.S.-based NGOs such as bar associations, trade and industry groups, and state law bodies, which assures consideration of U.S. private-sector objectives.

Host Country Relations

The United States continued throughout 2002 to participate in the work of the Committee on Relations with the Host Country [the United States]. The Committee provides a forum to discuss issues concerning the UN diplomatic community in New York City, such as the security of missions, the safety of their personnel, tax questions, legal and visa issues, and privileges and immunities. Established in 1971 by the General Assembly, the Committee is responsible for issues in connection with the implementation of the UN Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations. During 2002, the 19-member Committee met on four occasions.

The Committee has long debated the subject of diplomatic parking in New York City, and asked the host country to design a parking program to reduce automobile congestion, and improve traffic flow and safety, while enabling the United Nations and its members to fulfill their duties. After extensive negotiations, the host country and the host city agreed in 2002 to a parking program that would be transparent, non-discriminatory, and consistent with international law.

On September 4, the United States presented the new program to members for their consideration while responding to their comments and questions. The members decided to seek the UN Legal Counsel's opinion. At the Committee's next meeting on October 15, the UN Legal Counsel noted the importance of good relations between the host city and the diplomatic community. He urged members to implement the new program.

On November 8, the General Assembly adopted without a vote the "Report of the Committee on Relations with the Host Country" (Resolution 57/22). The resolution reaffirmed the UN Headquarters Agreement, the Vienna Convention on Diplomatic Relations, and the Convention on the Privileges and Immunities of the United Nations; noted the UN Legal Counsel's opinion on the Diplomatic Parking Program and the host country's commitment to maintaining appropriate conditions for the functioning of the delegations and missions accredited to the United Nations; requested that the host country remove travel controls previously imposed by the host country on certain missions and staff members of the Secretariat of certain nationalities as soon as possible; and expressed its expectation that the host country would ensure the issuance of entry visas on a

timely basis. Finally, the resolution expressed the Committee's appreciation for the efforts of the host country.

International Court of Justice

The International Court of Justice (ICJ) is the United Nations' main judicial organ. The ICJ adjudicates cases submitted to it by states and gives advisory opinions to the General Assembly, the Security Council, or other UN organs and specialized agencies authorized by the General Assembly to request such opinions.

Fifteen judges sit on the ICJ, no two of whom may be nationals of the same state. The UN General Assembly and the Security Council, voting separately, elect the Court's judges from a list of persons nominated by national groups in the Permanent Court of Arbitration. Judges are elected for nine-year terms, with five judges elected every three years.

As of December 31, 2002, the Court consisted of Gilbert Guillaume (France—President), Shi Jiuyong (China—Vice-President), Shigeru Oda (Japan), Raymond Ranjeva (Madagascar), Geza Herczegh (Hungary), Carl-August Fleischhauer (Germany), Abdul G. Koroma (Sierra Leone), Vladlen S. Vereshchetin (Russia), Rosalyn Higgins (United Kingdom), Gonzalo Parra-Aranguren (Venezuela), Pieter H. Kooijmans (Netherlands), Francisco Rezek (Brazil), Awn Shawkat Al-Khasawneh (Jordan), Thomas Buergenthal (United States), and Nabil Elaraby (Egypt).

At the election in the fall of 2002, Judge Shi Jiuyong and Judge Abdul G. Koroma were re-elected to the Court, and Hisashi Owada (Japan), Bruno Simma (Germany), and Peter Tomka (Slovakia) were elected for the first time.

In 2002, the United States litigated the following cases before the ICJ.

Iran v. United States of America

This case, which continued throughout 2002, dates back to 1992, when Iran sued the United States in the ICJ claiming that U.S. military actions against Iranian oil platforms in the Persian Gulf in 1986 and 1987, during the Iran–Iraq conflict, violated the U.S.–Iranian 1955 Treaty of Amity. The incidents cited by Iran followed attacks by Iranian military forces against U.S. naval and commercial vessels in the Gulf.

The United States filed a Preliminary Objection to the Court's jurisdiction that was considered at hearings in September 1996. In December 1996, the ICJ decided that it did not have jurisdiction under two of the three treaty articles invoked by Iran, but that it had jurisdiction to consider a third treaty claim.

On June 23, 1997, the United States filed its Counter-Memorial and a counter-claim. On March 10, 1998, the ICJ held that the counter-claim was "admissible" and directed the parties to submit further written pleadings on the merits. Following two requests for extensions, Iran filed its

Reply and defense to the U.S. counter-claim on March 10, 1999. The United States filed its Rejoinder on March 23, 2001. Iran subsequently requested and received authorization to submit an additional written pleading relating solely to the U.S. counter-claim, which it filed on September 24, 2001. In late 2002, the ICJ scheduled three weeks of oral proceedings in the case, to commence on February 17, 2003.

Libya v. United States of America

This case against the United States also dates back to 1992, when Libya brought suits against the United States and the United Kingdom charging violations of the 1971 Montreal (Air Sabotage) Convention. Libya claimed that the United States and the United Kingdom interfered with Libya's alleged right under the Montreal Convention to try two persons accused by American and Scottish authorities of bombing Pan Am Flight 103 over Lockerbie, Scotland on December 21, 1988.

On June 20, 1995, the United States filed Preliminary Objections to the ICJ's jurisdiction in the case; the United Kingdom also filed Preliminary Objections. October 13–22, 1997, the ICJ held hearings on both sets of Preliminary Objections. On February 27, 1998, the ICJ rejected some of the U.S. and British Preliminary Objections while holding that others could only be decided during the merits stage of the case. The ICJ ordered the United States to file its Memorial by December 31, 1998.

On December 8, 1998, the United States asked the ICJ for a three-month extension, to determine whether Libya would respond to an Anglo-American initiative proposing creation of a Scottish court in the Netherlands to try the two suspects. On December 17, 1998, the ICJ extended the filing date for the U.S. and British Counter-Memorials until March 31, 1999. The United States and the United Kingdom then both filed Counter-Memorials on that date.

On April 5, 1999, the two suspects arrived in the Netherlands accompanied by the UN Legal Counsel. Dutch authorities detained the two suspects, who were then extradited to the custody of Scottish authorities for trial in a Scottish court set up in the Netherlands.

In June 1999, the ICJ held a meeting with the parties to the cases to discuss further scheduling in the cases in light of the surrender of suspects for trial. The ICJ subsequently ordered Libya to file its Replies to the U.S. and U.K. Counter-Memorials by June 29, 2000. After Libya submitted the necessary filings, the ICJ ordered the United States and the United Kingdom to file their Rejoinders by August 3, 2001, which they did. The case continued through 2002, but without filings by any of the parties or action by the court.

International Criminal Court (ICC)

The International Criminal Court (ICC) is not a UN organization and on May 6, 2002, the United States informed the Secretary-General, in his

capacity as treaty depositary, that it would not become a party to the Rome Statute of the ICC, which it regards as fundamentally flawed. In so doing, the United States nullified any legal effects resulting from its signature of the ICC treaty. The United States strongly objected to the ICC's claim of jurisdiction over nationals of non-parties to the Rome Statute. The United States was also concerned about the potential for conflict with the UN Charter, which gives primary responsibility for the maintenance of international peace and security to the Security Council.

The ICC could have affected the participation of the United States in peacekeeping missions because peacekeepers from non-ICC states could be exposed to unnecessary legal jeopardy. To guard against this possibility, the United States secured the Security Council's unanimous adoption of Resolution 1422 on July 12, which, under Chapter VII of the UN Charter, contains a request, binding under the Rome Statute, that the ICC neither investigate nor prosecute personnel and officials from states not party to the ICC for acts or omissions relating to UN-authorized peacekeeping operations for the following 12 months. Such a request by the Security Council is consistent with Article 16 of the Rome Statute. The resolution further mandates that no UN member state take any action inconsistent with that request. The Security Council expressed its intention to renew this request for a further 12-month period. The United States also began to pursue a global network of agreements with individual countries to protect all U.S. nationals from ICC jurisdiction.

The United States continued to be a forceful advocate for accountability for war crimes and other grave violations of international law. U.S. policy aimed to encourage states to pursue justice within their sovereign institutions and, when appropriate, through *ad hoc* courts and other mechanisms established by the UN Security Council.

International Law Commission (ILC)

The International Law Commission (ILC), which first met in 1948, promotes the development and codification of international law. The ILC consists of 34 distinguished figures in international law serving in their individual capacities. The General Assembly elects the members every five years for five-year terms. One member of the ILC is an American, Robert Rosenstock, who began his third term in 2002 when he was elected ILC Chair.

At its 54th session in 2002, the ILC continued to work on "reservations to treaties" by adopting 11 draft guidelines on the formation and communication of legal reservations and interpretive declarations. The ILC also adopted seven articles on "diplomatic protection."

The ILC continued to work on the following subjects: "unilateral acts of states"; "international liability for injurious consequences arising out of acts not prohibited by international law"—that is, international liability in the case of loss from transboundary harm arising out of hazardous activi-

ties; “responsibility of international organizations”; “fragmentation of international law”—that is, difficulties arising from the diversification and expansion of international law; and “shared natural resources.”

In 2002, the UN General Assembly’s Sixth Committee (legal issues), considered the annual Report of the International Law Commission. The United States representative to the Sixth Committee stated that the ILC “ha[d] continued its outstanding work on a wide variety of international law issues.”

He made further procedural and substantive observations about the ILC’s work. He recommended that the ILC accelerate and complete its analysis of “reservations to treaties.” He stated that the United States opposed a proposal by a Special Rapporteur on “reservations to treaties” that would give a treaty depositary the authority to determine whether a signatory’s reservation is consistent with the object and purpose of the treaty. At the same time, he noted that reservations received by depositaries should be circulated to all of the parties.

He stated the U.S. concern regarding “diplomatic protection,” that exceptions set forth in the ILC’s draft article 4 on “continuous nationality”—the customary international law principle that holds that a state is entitled to exercise diplomatic protection of a person who both was a national at the time of the injury and remains a national at the time of the presentation of the claim—do not comport with the rules of customary international law and, therefore, should be revised.

With respect to “international liability for injurious consequences arising out of acts not prohibited by international law,” he declared the U.S. opposition to the creation of any global liability regime. Rather, changes in international liability regulation should proceed only following careful negotiations over discrete topics or regarding particular regions.

He questioned the wisdom of approaching the subject “shared natural resources” in a sweeping manner. He thought a better use of ILC resources would be to study groundwater issues. It is anticipated that the ILC will consider his observations when it works on these topics in 2003.

Strengthening the Role of the United Nations

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (Charter Committee) held its 27th annual session March 18–28. The General Assembly Sixth Committee (legal issues) debated and adopted in the fall a resolution adopting the report of the Committee’s work, and a resolution on its chief substantive agenda item concerning “Implementation of Charter Provisions Related to Assistance to Third States Affected by the Application of Sanctions.” That issue concerns, principally, Article 50 of the Charter which provides that a state, “which finds itself confronted with special economic problems” arising from the carrying out of UN sanctions (or

other preventive or enforcement measures), shall have the right “to consult the Security Council with regard to a solution of those problems.” The General Assembly subsequently adopted the resolutions by consensus on November 19, 2002 (Resolutions 57/24 and 57/25, respectively).

The Special Committee recommended to the General Assembly that it continue to consider the aforementioned sanctions assistance issue by commencing a substantive debate regarding all related Secretary-General reports pertaining to the matter, in particular the report on the results of the June 1998 *ad hoc* expert group meeting on methodological approaches to assessing the third-country effects of sanctions. The Special Committee also strongly encouraged the Secretary-General to expedite the submission of his further views on the issue, which would take into account, *inter alia*, the recent work of the Security Council’s *ad hoc* working group on sanctions. The United States reiterated its support for procedural measures aimed at ensuring that proper attention be paid to this issue by both the United Nations and other appropriate bodies. The United States stressed that international financial institutions would lead in addressing such economic problems, while opposing such proposals as calling for a UN trust fund, funded by assessed contributions, for such aggrieved third states.

Other subjects considered by the Special Committee and supported by the United States as having practical merit included ways and means of improving the organization’s dispute prevention and settlement capabilities by enhancing mediation and other tools available to the Secretary-General, and improving the working methods and increasing the efficiency of the Special Committee itself. On the former subject, the United States was instrumental in steering the Committee toward consensus on a Sierra Leonean and U.K. proposal, which was subsequently adopted by the General Assembly as Resolution 57/26, on the Prevention and Peaceful Settlement of Disputes. On the latter subject, the United States was supportive of the Japan-led initiative to streamline the Special Committee’s work, particularly through a mechanism for deleting from the Committee’s meeting agenda long-standing, often politically-charged, proposals that were duplicative of matters being considered elsewhere in the organization and/or stood no chance of achieving consensus. In this regard, the United States once again took a lead role in the Special Committee in opposing, as unnecessary and inappropriate, continued efforts by some other delegations to foster new, generic criteria and guidelines aimed at establishing certain controls with respect to the imposition of sanctions, peacekeeping operations, the use of force, and General Assembly versus Security Council prerogatives.

War Crimes Tribunals

International Criminal Tribunals for the former Yugoslavia and Rwanda

In 2002, the United States continued to support the work of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) that try individuals accused of having committed genocide, crimes against humanity, and other violations of international humanitarian law in these two countries. The Security Council, with U.S. backing, established the ICTY in May 1993 and the ICTR in November 1994 as organs of the Council to which they report regularly.

From its inception through the end of 2002, the ICTY had indicted 124 individuals, of which 41 persons were held in custody, 30 were convicted, five acquitted of all charges, eight were standing trial, and the rest fugitives from justice. At the ICTR, 81 individuals had been indicted from the tribunal's inception through the end of 2002, and 62 were in custody, of which eight were convicted, one acquitted, and 22 were on trial.

The United States has encouraged both tribunals to devise strategies that would enable them to complete all trials by 2008. In June 2002, Judge Claude Jorda, then-President of the ICTY, reported to the Security Council on achieving this objective. He recommended prosecuting the highest-level offenders and letting Bosnia, Yugoslavia, and Croatia prosecute the others. After his and Carla Del Ponte's (the Chief Prosecutor of both Tribunals) remarks, the Security Council, with U.S. support, adopted a Presidential Statement on July 23, 2002, which endorsed the ICTY's completion strategy.

The United States continued to encourage ICTY and ICTR officials to streamline their organizations and complete the task before them. To address the case backlog and expedite ICTR proceedings, the United States supported Security Council Resolution 1431 of August 14, which authorized the tribunal to use a pool of 18 *ad litem* (temporary) judges, of which four could be used at any one time.

The United States continued to press regional governments to cooperate fully with the ICTY by arresting and extraditing to The Hague indictees, such as Radovan Karadzic and Ratke Mladic, who lived in their territories.

In June 2002, the United States expanded its Rewards for Justice Program, offering up to \$5 million for information leading to the capture of those indicted by the ICTR. Apprehension of three leading suspects—including the arrest of General Bizimungu in Angola and of Colonel Renzaho, an accused mastermind of the Rwandan genocide, in the Democratic Republic of the Congo—followed. A significant rewards payment for the arrest of fugitives was also approved under the program for the Balkans in 2002.

In July 2002, Prosecutor Del Ponte informed the Security Council that Rwanda's Government and victims associations had impeded the tribunal from receiving the testimony of witnesses, delaying important ICTR trials. U.S. officials have tried to improve communication among survivor support organizations, the ICTR, and Rwanda's Government.

Rwanda's Government renewed its cooperation with the ICTR, enabling trials to resume in the fall of 2002. But in October, Prosecutor Del Ponte and Judge Jorda reported to the Security Council that cooperation of the Federal Republic of Yugoslavia, the Republika Srpska, and Croatia was inadequate.

In December, the Security Council adopted a Presidential Statement, which noted the Prosecutor's letter and Rwanda's response, and a letter from then-ICTY President Jorda on the Federal Republic of Yugoslavia's non-cooperation and its response. The Security Council reaffirmed its support of the ICTR and ICTY and recalled the obligation of every state to cooperate fully with the tribunals.

Annual UN performance reports have noted that an excessive number of defense counsel changes have delayed ICTR trials. During 2002, the United States urged both the ICTR and ICTY to improve their efficiency and effectiveness and address cases in which the defense counsel splits its fee with defendants claiming indigence. In response, the tribunals adopted stricter codes of conduct regarding this fee-splitting and dismissed defense counsel who had done this. The United States commended these steps, but stated that more could be done.

In a 2001 General Assembly session to improve the tribunals, the United States had recommended that the ICTR and ICTY hire on-site auditors and investigators. At the end of 2002, both tribunals had nearly completed arrangements to hire such personnel.

The United States is the largest financial contributor to both the ICTY and ICTR. In calendar year 2002, U.S. assessed contributions for both tribunals totaled \$52.2 million.

Sierra Leone Special Court

The Sierra Leone Special Court plays a fundamental role assisting Sierra Leone to achieve a lasting peace and national reconciliation after more than a decade of conflict. In 2000, the United States helped secure adoption of UN Security Council Resolution 1315, which requested the Secretary-General to enter into an agreement with the Government of Sierra Leone to establish an independent special court with jurisdiction over those who bear the greatest responsibility for violations of international humanitarian and Sierra Leonean law. The Special Court was envisaged as a UN/Sierra Leone independent, hybrid body rather than a subsidiary organ of the Security Council.

On January 16, 2002, Under Secretary-General for Legal Affairs Hans Corell and Sierra Leone Attorney-General Solomon Berewa signed an

agreement between the United Nations and Sierra Leone establishing the Sierra Leone Special Court. As a key contributor to the Special Court, the United States participated in the Special Court Management Committee, which provides administrative oversight over the body. In January, the United States joined other representatives on the Management Committee traveling to Sierra Leone on a planning mission.

On April 19, 2002, Secretary-General Annan announced the appointment of David Crane (United States) as the Special Court's prosecutor. Mr. Crane and the Court's Registrar, Robin Vincent (United Kingdom) arrived in Freetown in the summer of 2002, and began setting up the court and hiring staff. The Prosecutor's office also began conducting investigations and meetings with Sierra Leoneans to explain the mission of the Special Court. A renowned forensic anthropologist, Dr. William Haglund, led a mission to Sierra Leone in September 2002 that completed an initial investigation of 30 mass graves. The team was scheduled to undertake two more missions in 2003. On December 2, 2002, the Court's Registrar swore in eight Special Court judges—five appointed by the United Nations and three by the Government of Sierra Leone. These eight would serve in a trial chamber, comprised of two judges appointed by the Secretary-General and one by Sierra Leone; and an appellate chamber, comprised of three judges appointed by the Secretary-General and two by Sierra Leone.

The United States contributed a total of \$10 million in voluntary funding for the court's first two years of operation, 2002 and 2003, and has pledged another \$5 million 2004.

In 2002, with U.S. support, the UN Office of the High Commissioner for Human Rights also established a Truth and Reconciliation Commission (TRC) in Sierra Leone. The TRC, while not a court of law, was to collect testimony of victims and perpetrators, and hold hearings, with the intent of creating an impartial record of human rights violations, and thereby promote healing and national reconciliation. In 2002, the United States contributed \$500,000 to the TRC. In mid-May, the names of the TRC Commissioners were announced; four were Sierra Leonean and three foreign. The TRC began its substantive work in December, taking statements in Bomaru, the village where the conflict started in March 1991.

